

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

Jonathan Sinclair,

Plaintiff,

v.

Case No. 1:05cv766

Commissioner of Social Security,

Judge Michael R. Barrett

Defendant.

**ORDER**

This matter is before the Court on the Magistrate Judge's Report and Recommendation filed December 7, 2007 (Doc. 10); and Defendant's Response (Doc. 11) filed December 21, 2007. This matter is now ripe for review.

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). Defendant's Response filed on December 21, 2007 (Doc. 11) is without objection to the Magistrate Judge's Report and Recommendation and brings to the Court's attention that dismissal in this matter was sought by the Defendant under Rule 12(b)(6) but granted by the Magistrate Judge under Rule 12(b)(1).

Having reviewed this matter de novo pursuant to 28 U.S.C. § 636, the Court finds Defendant's Objection well taken and adopts the Magistrate Judge's Report and Recommendation in part and dismisses this matter under Rule 12(b)(6) as sought by the Defendant. See Bowen v. City of New York, 476 U.S. 467 (1986) and Caudill v. Bowen, 1989 U.S. Dist. Lexis 7049 (M.D. Tenn 1989)

Accordingly, it is **ORDERED** that the Report and Recommendation of the Magistrate Judge is hereby **ADOPTED in part**. The Defendant's Motion to Dismiss is

**GRANTED.** This action is closed.

**IT IS SO ORDERED.**

bac

January 3, 2008

S/Michael R. Barrett  
Michael R. Barrett, Judge  
United States District Court